

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Crim. No. 03-091-SLR
)
ANDRE HUGGINS,)
)
 Defendant.)

MEMORANDUM ORDER

At Wilmington this 21st day of October, 2004, having considered defendant's supplemental motion to dismiss the indictment and supplemental motion to suppress, and the papers submitted in connection therewith;

IT IS ORDERED that said motions (D.I. 52, 55, 60, 61) are denied for the reasons that follow:

1. **Defendant's motion to dismiss the indictment based on alleged misrepresentations to the grand jury.** The United States Supreme Court established the standard for dismissing an indictment based on an error in a grand jury proceeding:

A district court is bound by the doctrine of "harmless error" and may not dismiss an indictment on the basis of prosecutorial misconduct before the grand jury without making a factual finding that the defendant was prejudiced by that misconduct. To find prejudice, the district court must establish that the violation substantially influenced the grand jury's decision to indict or there is grave doubt that the decision to indict was free from the substantial influence of such violations.

Bank of Nova Scotia v. United States, 487 U.S. 250, 256

(1988) (citations omitted); accord United States v. Soberon, 929 F.2d 935, 940 (3d Cir. 1991) (the requirement of "prejudice" is rarely satisfied and only in the most extreme circumstances, e.g., grand juries selected in a discriminatory manner).

2. Defendant contends that portions of Special Agent Eric Miller's testimony to the grand jury were knowingly false and perjurious. (D.I. 61) Specifically, defendant argues that Miller's testimony regarding the following was false: (1) defendant's role in the drug distribution network; (2) Jermaine Franklin; (3) Heather Blake; (4) the K-9 dog search of Franklin's vehicle; (5) admissions made by defendant; and (6) defendant's income tax returns.

3. Plaintiff asserts that defendant's arguments do not meet the requirements of Bank of Nova Scotia, 487 U.S. at 256, and that an evidentiary hearing is unnecessary. (D.I. 66)

4. After reviewing the affidavits, grand jury testimony, defendant's statements, warrants, and investigation and crime reports, the court finds defendant's objections go to information that is cumulative and immaterial. Therefore, any discrepancies of record¹ suggest, at most, misstatements, not

¹For instance, Agent Miller testified to the grand jury that a K-9 dog alerted positively to the presence of drugs in the rear passenger area of the car, which Miller described as the same area where surveillance officers observed defendant place a bag that he transported to Franklin's apartment. The K-9 officer's

perjury. See Soberon, 929 F.2d at 941.

5. **Defendant's motion to suppress evidence.**

Defendant contends that the affidavit filed in support of the warrants issued on 105 Mederia Circle, Newark, Delaware and 30 Blue Spruce Drive, Bear, Delaware was based on perjurious statements by Agent Miller.

a. **105 Mederia Circle.** The 105 Mederia Circle property is apparently the residence of Heather Blake. Defendant has presented neither evidence nor testimony demonstrating that he is the owner, lessor or even a resident of this location. (D.I. 58, ¶ 15: "A review of telephone subscriber records for Heather Blake indicates that Ms. Blake's residence is located at 105 Mederia Circle, University Village Apartments, Newark, Delaware.") Absent this showing, defendant does not have a legitimate expectation of privacy in this property sufficient to challenge the search. United States v. Perez, 280 F.3d 318, 336-337 (3d Cir. 2002).

b. **30 Blue Spruce Drive.** The property located at 30 Blue Spruce Drive, Bear, Delaware is defendant's residence.

report indicates that the dog sniffed continuously and was interested in the front passenger seat, but did not alert to the presence of drugs. A second discrepancy relates to defendant's tax returns. Miller testified to the grand jury that defendant reported no income for the years 2000 and 2001. Defendant argues this is a material misrepresentation because he did not file an income tax return in 2000 and, in 2001, he actually reported income in excess of \$30,000.

In Illinois v. Gates, 462 U.S. 213, 238 (1983), the United States Supreme Court adopted a "totality-of-the-circumstances analysis" for probable cause determinations in the context of search warrants. According to the Court,

[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Id. at 238. The standard of review of an issuing magistrate judge's probable cause is not de novo. Id. at 236; accord United States v. Jones, 994 F.2d 1051, 1055 (3d Cir. 1993). Instead, the Court concluded that the reviewing court should afford "great deference" to the issuing officer's determination and should avoid "interpreting affidavit[s] in a hyper-technical, rather than a commonsense manner." Id. In so doing, the reviewing court confines itself to the facts that were before the issuing officer, "'i.e., the affidavit, and [does] not consider information from other portions of the record.'" United States v. Hodge, 246 F.3d 301, 305 (3d Cir. 2001), quoting Jones, 994 at 1055. When resolving questionable cases, the preference accorded warrants should prevail. Id. Moreover, direct evidence linking the place to be searched with a crime is not required for a warrant to issue. Id. at 1056; accord United States v. Whitner, 219 F.3d 289, 297 (3d Cir. 2000); Hodge, 246 F.3d at 306-307.

6. Applying this standard to the affidavit of record, the court finds that the magistrate judge had a substantial basis for the probable cause determination that defendant was engaged in an extensive, organized practice of drug dealing and that it was likely that documentary evidence of that drug dealing would be located in his home.

7. **Evidentiary hearing.** Having determined that the supplemental motions to dismiss and to suppress have no merit, the request for an evidentiary hearing on those motions is denied as moot. Moreover, and consistent with the substantive denial of the motions, defendant failed to demonstrate that Agent Miller deliberately or recklessly included a false statement in his affidavit or that the probable cause finding was premised on the alleged false statement. See Franks v. Delaware, 438 U.S. 154, 171 (1978) ("To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof").

Sue L. Robinson
United States District Judge